CF0000110400

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

MISC.PETITION NO. 4808 OF 1993.

PETITIONER : D.K.Tiwari, aged about 56 years, S/o.R.P.Tiwari, Occu: Development Officer, Life Insurance Corpn.of India, Mungeli, Division: Raipur, DISTRICT:BILASPUR (M.P.).

- versus -

RESPONDENTS :

1. Life Insurance Corpn.of India, Through: Its Chairman, Central Office, BOMBAY - 21.

2. Zonal Manager, Life Insurance Corpn. of India, Zonal Office, KANPUR (U.P.).

3. Divisional Manager, Life Insurance Corpn.of India, Divisional Office, Raipur, DISTRICT:RAIPUR (M.P.).

COMMISSIONER ... JABALPUR Smt. SUMAN SCNL

PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA FOR WRITS IN THE NATURE OF CERTIORARI MANDAMUS PROHIBITION ETC. AND FOR APPROPRIATE FURTHER DIRECTIONS.

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HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Misc. Petition No.4808 of 1993

D. K. Tiwari

Vs.

Life Insurance Corporation of India & others

O R D E R

Post for 16.02.2005

Sd/-
Sunil Kumar Sinha
Judge

Avinash Kumar Mishra
16/2/05
Adv
for Respondents

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Misc. Petition No.4808 of 1993

D. K. Tiwari

Vs.

Life Insurance Corporation of India and others

Appearance:

Shri Sudhir Verma, counsel for the Petitioner.

Shri Mukesh Sharma, with Shri Avinash Kumar Mishra, Counsel for the respondents.

ORDER
(16.2.2005)

Sunil Kumar Sinha, J,

The petitioner has filed this writ petition for quashing the order dated 21.7.1978 (Annexure-D) passed by Respondent No.3, the Disciplinary Authority (The Divisional Manager) as also the order dated 25.1.1979 (*Annexure-G*) passed by the appellate authority, respondent no.2 (The Zonal Manager) under the provisions of Life Insurance Corporation of India (Staff) Regulations 1960.

(2) The facts of the case are that the petitioner was appointed as a Development officer in the Life Insurance Corporation of India (hereinafter referred to as the "Corporation") sometime in the year 1964. For the said post he had filled up the Application Form dated 31.3.1964 in which he had declared his academic

qualification as "Matric passed and appeared in intermediate (result not out so far)". He has shown his date of birth as 06.05.1938.

(3) On 12th July 1977, the petitioner was served with a charge sheet by the disciplinary authority in which it was specified that the Corporation has required the deposit of original Matriculation Certificate from the petitioner which he could not deposit upto 28.3.1970 and for this reason a memo was issued to him on the said date. Various subsequent reminders were also issued to him and time was granted at the request of the petitioner upto 31.7.1976, but the petitioner failed to deposit the certificate. On 18.1.1977 he was again directed to submit the Matriculation certificate within 10 days from the receipt of the above letter, but he again failed to deposit the same. However, a letter was sent by the petitioner for granting time upto 30.04.1977 which was granted by an official communication dated 17.2.1977 even then the order was not complied and in the said manner, the petitioner failed to comply and obey the orders and directions given to him in course of his official duty by the competent authority. The charge-sheet further specifies that by the aforesaid acts, the petitioner failed to obey and comply with the official instructions given to him and has acted in manner prejudicial to the good conduct and detrimental to the interest of the Corporation and has failed to

maintain absolute integrity thereby violating the provisions of regulations, 21, 24 and 39(1) of the aforesaid Regulations of 1960 and was liable for one or more of the penalties as specified under Regulation 39(1)(a) to (o) of the said Regulations. A copy of the charge sheet has been placed on record as *Annexure R-1.*

(4) The petitioner filed his reply dated 25.7.1977 to the aforesaid charge sheet. He denied the allegations thereof. The petitioner submitted that he had appeared in the Intermediate examination of M.P.Board of Secondary Education for the year 1963 and has attached his original Matriculation Certificate with the form of the said examination. He further submitted that the original marks sheet of the Intermediate Examination and also the Certificate of Board of Class-VIII have been submitted in the office regarding the proof of age. He also submitted that his age stands admitted by the Corporation as 06.5.1938 in his first Policy No.S/8946676 on the basis of office records of the Co-operative Bank, Bilaspur where he was serving at that time. He also submitted that he had applied many times to the Board of Secondary Education for returning the original High School (Matriculation) Certificate, which have not been responded to, and for this reason only he could not produce the same before the Corporation on its demand and had always prayed for time to make necessary efforts. Placing all these facts, the petitioner prayed for withdrawal of the charge sheet dated

12.7.1977 issued to him. A copy of the reply dated 25.7.1977 has been placed on record as *Annexure R-2.*

(5) It appears from the order *Annexure-D* that one Shri S.K.Vasudeva, ADM (NB) Divisional Office, Raipur, was appointed as Enquiry Officer who after conducting the enquiry submitted his report dated 14.4.1978, according to which the charges in relation to failure to obey and abide by the instructions issued to the petitioner from time to time in the matter of submission of Matriculation certificate were held to be provide. Incidentally, it was also held that the behaviour of the petitioner can be considered to be violative in the sense that he did not maintain absolute integrity in dealing with the employer. The Disciplinary Authority concurred with the findings of the Enquiry Officer and issued a show cause notice dated 22.5.1978 to the petitioner proposing the penalty of removal from service of the Corporation under Regulation 39(1)(f). The petitioner submitted his reply dated 10.07.1978. However, the disciplinary authority holding it to be unsatisfactory and unconvincing against the proposed penalty passed the order dated 21.7.1978 *(Annexure-D),* but inspite of imposing penalty of removal from service, he imposed penalty of lowering down permanently the basic pay by two stages in the time scale under regulation 39(1)(d).

(6) Against the aforesaid order passed by the disciplinary authority the petitioner filed an appeal before the appellate authority. A copy of memo of appeal has been filed as *Annexure-F*. The appellate authority passed the impugned order *Annexure-G* on 25.01.1979 dismissing the appeal of the petitioner and confirming the punishment order passed by the disciplinary authority. It is after this, the petitioner has filed this petition challenging the legality, validity and propriety of the aforesaid orders and has prayed for quashment of the same with all consequential benefits in form of arrears (difference) of pay etc., etc.

(7) Alongwith the petition, the petitioner filed a photocopy of the Matriculation Standard Examination Certificate 1962 which shows that the petitioner has passed the said examination in second division from A.I.V.S. Examinations, Aligarh. The document is Annexure A. Annexure –C is the gist of Warshik Prativedan of Jabalpur University which shows the mention of All India Vidvat Sammelan (A.I.V.S.), Aligarh, which according to the averments in the petition has been recognized by this University.

(8) The main contention of the petitioner is that since his original certificate was deposited with the Board of Secondary Education for appearing in Intermediate Examination, therefore, he could not produce the same either at the time of his appointment or at any subsequent stage. However, he had

produced the correspondence from the Board and had also shown that he had made all efforts with the office of the Board to obtain the original certificate, but the same could not be obtained and for this reason alone, after taking many times from the Corporation, he could not produce the original certificate,which cannot be said to be a misconduct or any act prejudicial to the good conduct and detrimental to the interest of the Corporation. It is also submitted that there is no violation of any of the provisions of the Regulations as mentioned under Regulations 21,24 and 39, therefore, the order of punishment is bad in law. The petitioner further submits that in fact on 09.12.1992 he was offered to appear in the interview for promotion to the cadre of A.B.M (Sales) and he has appeared in the said interview. A copy of the mark sheet of Board of Secondary Education, M.P., Bhopal, relating to the Intermediate (Art) Examination 1963 has also been filed by the petitioner subsequently.

(9) The respondents have also filed their return and have denied the contentions of the petitioner. It is stated by them that after conducting the departmental enquiry for the charges leveled against the petitioner, the petitioner has been rightly held guilty for the same and an appropriate punishment has been awarded to him. The enquiry officer, Disciplinary Authority as well as appellate authority have acted in accordance with law and the

punishment order as well as the appellate order do not warrant interference in writ jurisdiction by this Court.

(10) Learned counsel for the petitioner submits that in fact, the charges leveled against the petitioner have not been proved and the enquiry officer as well as the disciplinary authority and the appellate authority erred in law by holding the aforesaid charges proved and established against the petitioner. In fact, the petitioner cannot be held liable for penalty under regulations 21, 24 or 39(1) of the aforesaid Regulations 1960.

(11) I have gone through the records of the case and have perused the enquiry report also. First of all, it is to be considered as to what is the scope of interference in such matters. In a decision reported in ***AIR 1989 S.C. 1185 (Union of India, appellant -Vs- Parma Nanda, respondent)*** in which the matter came through the Tribunal, the Apex Court held that the jurisdiction of the tribunal to interfere with the disciplinary matters or the punishment cannot be equated with an appellate jurisdiction. The tribunal cannot interfere with the findings of the enquiry officer or the competent authority where they are not arbitrary or utterly perverse.

(12) The same view was also taken by the apex Court in the matter of ***Bhagat Ram, Appellant -Vs- State of Himachal Pradesh and others, Respondents reported in AIR 1983 S.C. Pg.454***. It has been held that in a petition under article 226, the High Court does not function as a court of appeal over the findings of the disciplinary authority, but where the finding is utterly perverse, the Court can always interfere with the same. The reference may also be made to the decision quoted in para 10 of the aforesaid judgment i.e., ***AIR 1964 S.C. 364 (Union of India, Appellant -Vs- H.C.Goel, Respondent)*** , the relevant portion of which are reproduced as under as has been reproduced in para 10 of Bhagat Ram's case.

> *"It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by the public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for*

instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Govt. in the said proceedings, which is the basis of his dismissal is based on no evidence."

(13) While dealing with the matter reported in ***(1996) 5 SCC 474 (State of T.N. –Vs- Thiru K.V.Perumal and others)*** where the matter came through the Administrative Tribunal, the Apex Court held that it is not the province of the tribunal to go into the truth or otherwise of the charges as the tribunal is not an appellate authority over the departmental authorities. It has also been held that the tribunal must be held to have exceeded its jurisdiction in entering upon a discussion whether the charges are established on the material available.

(14) On the basis of the aforesaid references, it emerges that normally this Court cannot interfere with the decision of the enquiry officer or the disciplinary authority or the appellate authority unless the decision is based upon no evidence on record or the same is utterly perverse or is reached in violation of fundamental principles of natural justice.

(15) Applying these principles in case in hand if the report of enquiry officer is perused, it transpires that the enquiry officer after receiving the reply gave an adequate opportunity of hearing to the petitioner and after recording the statements of the Presenting

Officer and the petitioner and after taking a declaration that no other witness is required to be examined, closed the proceedings and after due analysis of material placed before him arrived at the conclusion referred to above. In this manner, fundamental principles of natural justice as well as the provisions of regulation 39(2) have been fully complied with in this case.

(16) The reference may also be made to the provisions of regulations 21 and 24. Regulation 21 says that the employee shall all times maintain absolute integrity and devotion to duty and shall conform to and abide by these regulations and shall observe, comply with and obey all the orders and directions which may, from time to time, be given to him in the course of his official duties by any person or persons under whose jurisdiction, superintendence or control, the employee may, for the time being be placed. Regulation 24 deals with the provision that every employee shall serve the Corporation honestly and faithfully and shall use the utmost endeavours to promote the interest of the Corporation and shall show courtesy and attention in all transactions. Regulation 39(1) deals with the provisions for imposing punishment and it is stated that the penalties specified vide Column (a) to (g) can be imposed on an employee who commits a breach of regulations or who displays the negligence, inefficiency or indolence or knowingly does anything detrimental to

the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline or is guilty of any other act prejudicial to good conduct.

(17) It is very clear from bare perusal of these 3 provisions that the specified penalties (any one or more) can be imposed by the disciplinary authority for good and sufficient reasons for even a breach of regulations of Corporation. If the fairness of the enquiry is not challenged and any arbitrariness is not established and the finding of the enquiry officer is based upon some evidence on record which goes to show that in fact, the petitioner did not obey the orders or instructions issued by his higher authorities then in all fairness it can be said that the petitioner was liable for penalty for breach of regulation 21. I have examined the finding of the enquiry officer. The finding has been arrived at after complete analysis. It has come on record that the petitioner was called upon by the Corporation to deposit his Matriculation Certificate right from the very beginning and several orders/instructions were issued to him in this regard. The petitioner did not obey the orders issued by the Corporation and he did not comply with the instructions issued to him. In fact, the petitioner ignored the instructions for so many times and after a very long period he came with a prayer for giving him some more time to produce the certificate. Even then he did not produce the certificate in time

prayed by him and ultimately failed to produce the same till last. In the said situation only, the enquiry officer has recorded a finding that the conduct of the petitioner was not bona-fide and he has disobeyed the orders of his higher authorities as if the original was not traceable from the Board, he could easily have obtained a duplicate copy and have produced the same to the authorities.

(18) In this manner, it is apparent that the present is not a case where the finding is utterly perverse or the same is based on no evidence on record or the same has been arrived at arbitrarily or has been recorded in violation of fundamental principles of natural justice.

(19) In the opinion of this Court, there is complete violation of regulation 21 and the petitioner has rightly been punished for the same in accordance with law. The punishment order as well as the appellate order does not require any interference under Article 226/227 of the Constitution of India. The petition has no merit and the same is dismissed. However, there shall be no order as to the costs.

Sd/-
Sunil Kumar Sinha
Judge